

Entered As Instrument No.
0200207724

STATE OF NEBRASKA)
COUNTY OF HALL) SS

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Kathie Dismore
REC'D CLERK

CASH _____
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ATJ TITLE CO.

This instrument prepared by
and after recording return to:
Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, N.W.
Suite 400
Atlanta, Georgia 30339
Attn: Abbye M. Goodling, Esq.

**FIRST AMENDMENT TO COMMON AREA
MAINTENANCE AGREEMENT**

THIS FIRST AMENDMENT TO COMMON AREA MAINTENANCE AGREEMENT (this "Amendment") is hereby made and entered into as of this 24 day of July, 2002, by and among **ROBERT M. ALLEN FAMILY LIMITED PARTNERSHIP**, a Nebraska limited partnership ("Allen"), **ALBERTSON'S, INC.**, a Delaware corporation ("Albertson's") and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("**Home Depot**"). Allen, Albertson's and Home Depot may sometimes be collectively referred to herein as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Allen and Albertson's entered into that certain Common Area Maintenance Agreement ("**CAMA**") dated March 11, 1999 and recorded June 24, 1999 as Instrument No. 99-106377 in the Official Record Books of Hall County, Nebraska, whereby Allen and Albertson's provided for the common operation, cleaning, maintenance, repair, replacement and insurance of the Common Area of that certain Shopping Center known as Eagle Run Shopping Center, located in Grand Island, Nebraska (as more particularly described in the CAMA).

WHEREAS, the CAMA encumbers Parcels 1 through 5 and 14 through 29 as shown on Exhibit "A" attached hereto and incorporated herein and more particularly described on Schedule I, attached hereto and incorporated herein by this reference (the "**Shopping Center**"). Subsequent to the recordation of the CAMA, Lots 1-9 (both inclusive) and Lots 24-29 (both inclusive) of Meadowlark West Third Subdivision (shown on Exhibit "A" as Parcels 1-9 and Parcels 24-29, respectively) were replatted and are now Lots 1 to 15 (both inclusive) of Meadowlark West Fourth Subdivision. As a result of the replat, the land area and designation of Parcels 3 to 9 (both inclusive) of the CAMA were altered to the configuration shown on Exhibit "A" attached hereto. Schedule I, attached hereto, also represents the reconfigured

Parcels. The remaining lots within the Meadowlark West Third Subdivision were not replatted and retain their original respective legal descriptions and Parcel designations.

WHEREAS, Home Depot has purchased (or is about to purchase) Parcel 5 as depicted on the Site Plan attached hereto as Exhibit "A" from Allen.

WHEREAS, Allen and Albertson's desire to make Home Depot a party to the CAMA and the Parties desire to further amend the CAMA in accordance with the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto modify and amend the CAMA as follows:

1. **Recitals**. Except as set forth herein, the recitals are incorporated herein as if set forth in full.
2. **Defined Terms**. Unless otherwise specifically provided for herein, all capitalized terms not defined herein shall have the same meaning ascribed to them in the CAMA.
3. **Site Plan**. The site plan attached to the CAMA as Exhibit "A" is hereby deleted in its entirety and the site plan attached hereto as Exhibit "A" (the "**Site Plan**") is hereby inserted in its place.
4. **Schedule I – Legal Description**. The legal description of the Shopping Center contained in Schedule I of the CAMA is hereby deleted in its entirety, and the legal description of the Shopping Center contained in Schedule I attached hereto is substituted in lieu thereof. All references in the CAMA to Schedule I shall be deemed to refer to Schedule I of this Amendment.
5. **Owners**. Home Depot shall hereafter be deemed to be an "Owner" along with Allen and Albertson's.
6. **Declaration of Restrictions and Grant of Easements**. "Declaration" shall mean that certain Declaration of Restrictions and Grant of Easements dated March 11, 1999 and recorded on June 24, 1999 as Instrument No. 99-106376 in the Official Records, Hall County, Nebraska, as same may be amended from time to time.
7. **Proportionate Share of Common Area Expenses**. The chart set forth in **Section 7.5** of the CAMA is hereby deleted in its entirety and the following chart is hereby inserted in lieu thereof:

Site Plan Parcel No.	Plat Legal Description	Phases 1 and 2: Land Area (Acres)	Percent
	Meadowlark West 3 rd Subdivision ("MW3") or Meadowlark West 4 th Subdivision ("MW4")		
1	Lot 4, MW4	0.98	2.34
2	Lot 5, MW4	6.00	14.32
3	Lot 6, MW4	1.68	4.01
4	Lot 7, MW4	5.18	12.36
5	Lot 8, MW4	10.88	25.97
14	Lot 14, MW3	1.04	2.48
15	Lot 15, MW3	1.04	2.48
16	Lot 16, MW3	1.12	2.67
17	Lot 17, MW3	1.17	2.79
18	Lot 18, MW3	0.99	2.36
19	Lot 19, MW3	1.12	2.67
20	Lot 20, MW3	1.39	3.32
21	Lot 21, MW3	1.47	3.51
22	Lot 22, MW3	0.90	2.15
23	Lot 23, MW3	1.05	2.51
24	Lot 3, MW4	1.32	3.15
25	Lot 2, MW4	1.32	3.15
26	Lot 1, MW4	0.84	2.01
27	Lot 12, MW4	0.63	1.50
28	Lot 11, MW4	1.01	2.41
29	Lot 10, MW4	<u>0.77</u>	<u>1.84</u>
	TOTAL	41.90	100.00

8. **Pylon Sign Maintenance.** Notwithstanding anything to the contrary in the CAMA, Home Depot, and no other Owner, shall maintain, repair and replace, when necessary, Center Pylon Sign E (as defined in the Declaration and shown on the Site Plan adjacent to Parcel 29).

Further, **Section 2.1(i)** is hereby amended by deleting the words "entitled to display" beginning in the first line at the top of page 3 of the CAMA and substituting the word "displaying" therefore.

9. **Common Area Insurance.** Allen hereby covenants and agrees that Home Depot shall be named as an additional insured on the commercial general liability insurance policy insuring the Common Area and further agrees to furnish to Home Depot certificates evidencing such insurance.

10. **Notice.** Section 13.7 is hereby amended to include the following notice provision for Home Depot:

Home Depot: Home Depot U.S.A., Inc.
1400 West Dundee Road
Arlington Heights, Illinois 60004
Attn: Tom Thoreson, Real Estate Manager
Fax: (847) 506-7830

With a copy to: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, N.W.
Building C, Floor 20
Atlanta, Georgia 30339-4024
Attn: Vice President, Real Estate Law Group
Fax: (770) 384-3042

With a copy to: Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, N.W.
Suite 400
Atlanta, Georgia 30339
Attn: Gil Y. Burstiner, Esq.
Fax: (770) 303-1115

11. **Ratification.** Except as modified hereby, the CAMA remains in full force and effect and binding on the Parties thereto. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document. This Amendment shall be governed in accordance with the laws of the State of Nebraska.

(Remainder of Page Intentionally Left Blank)
(Signatures Appear on the Following Pages)

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

ALLEN:

ROBERT M. ALLEN FAMILY PARTNERSHIP, a Nebraska limited partnership

By: Robert M. Allen

Name: Robert M. Allen

Title: General Partner

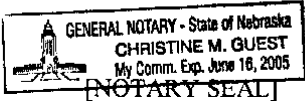
STATE OF Nebraska

COUNTY OF Adams

On this 16th day of July, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert M. Allen, to me known to be the General Partner of Robert M. Allen Family Limited Partnership, the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to executed the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires: June 16, 2005



Christine M. Guest
Notary Public in and for the
State of Nebraska
Residing at Juniata

(Signatures Continue On The Following Pages)

200207724

ALBERTSON'S:

ALBERTSON'S, INC., a
Delaware corporation

By: [Signature]

Lincoln V. Sharp, Jr.

Vice President, Real Estate Law

[Handwritten mark]

STATE OF IDAHO

COUNTY OF ADA

On this 22nd day of July, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Lincoln V. Sharp, Jr. to me known to be the Vice President, Real Estate Law, of **Albertson's, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

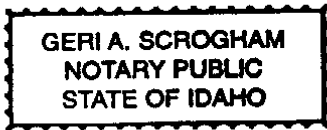
WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

12-15-06

[Signature: Geri A. Scrogam]
Notary Public in and for the
State of Idaho
Residing at Boise

[NOTARY SEAL]



(Signatures Continue On The Following Pages)

200207724

Home Depot:

HOME DEPOT U.S.A., INC., a Delaware corporation

By: [Signature] CMB
Name: Jeff Israel
Title: Senior Corporate Counsel - Real Estate

STATE OF GEORGIA

COUNTY OF COBB

On this 21 day of July, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared JEFF ISRAEL, to me known to be the Senior Corporate Counsel of Home Depot U.S.A., Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires: 12-27-03

[Signature]
Notary Public in and for the
State of Georgia
Residing at Atlanta, GA

[NOTARY SEAL]



LENDER'S CONSENT AND SUBORDINATION

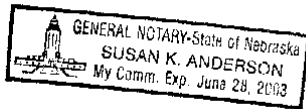
Wells Fargo Bank Nebraska, N.A., formerly Norwest Bank Nebraska, N.A. ("Lender"), whose address is P.O. Box 1048, Hastings, Nebraska, 68901, is the beneficiary under that certain Deed of Trust Security Agreement and Fixture Financing Statement dated January 3, 2000, and recorded in the official records of Hall County, Nebraska, on February 7, 2000, as Document No. 0200001027 (the "Mortgage"). Lender hereby consents to and approves this Second Amendment to Declaration of Restrictions and Grant of Easements and hereby acknowledges and agrees that the Mortgage and any other security instruments securing Lender's loan on the property encumbered by this Second Amendment to Declaration of Restrictions and Grant of Easements shall be subordinate to, and subject to, the terms and conditions of this Second Amendment to Declaration of Restrictions and Grant of Easements.

WELLS FARGO BANK NEBRASKA, N.A.

By: Xavi W Cunningham
Its Vice President

State of Nebraska)
County of ADAMS) ss.

On this 28th day of June, 2002, before me, the undersigned, a Notary Public in and for the above-named state, personally appeared X Cunningham known to me to be a Vice Pres of Wells Fargo Bank Nebraska, N.A., the entity that executed the foregoing instrument, and acknowledged to me that he executed the foregoing instrument as his free and voluntary act, and as the free and voluntary act of said corporation, and on oath stated that he is authorized to execute the said instrument.



Susan K Anderson
Notary Public

My commission expires: 6-28-03

SCHEDULE ILegal Description of Shopping Center
and Parcel Conversion Chart

Site Plan Parcel No.	Plat Legal Description
	Meadowlark West 3 rd Subdivision ("MW3") or Meadowlark West 4 th Subdivision ("MW4")
1	Lot 4, MW4
2	Lot 5, MW4
3	Lot 6, MW4
4	Lot 7, MW4
5	Lot 8, MW4
14	Lot 14, MW3
15	Lot 15, MW3
16	Lot 16, MW3
17	Lot 17, MW3
18	Lot 18, MW3
19	Lot 19, MW3
20	Lot 20, MW3
21	Lot 21, MW3
22	Lot 22, MW3
23	Lot 23, MW3
24	Lot 3, MW4
25	Lot 2, MW4
26	Lot 1, MW4
27	Lot 12, MW4
28	Lot 11, MW4
29	Lot 10, MW4

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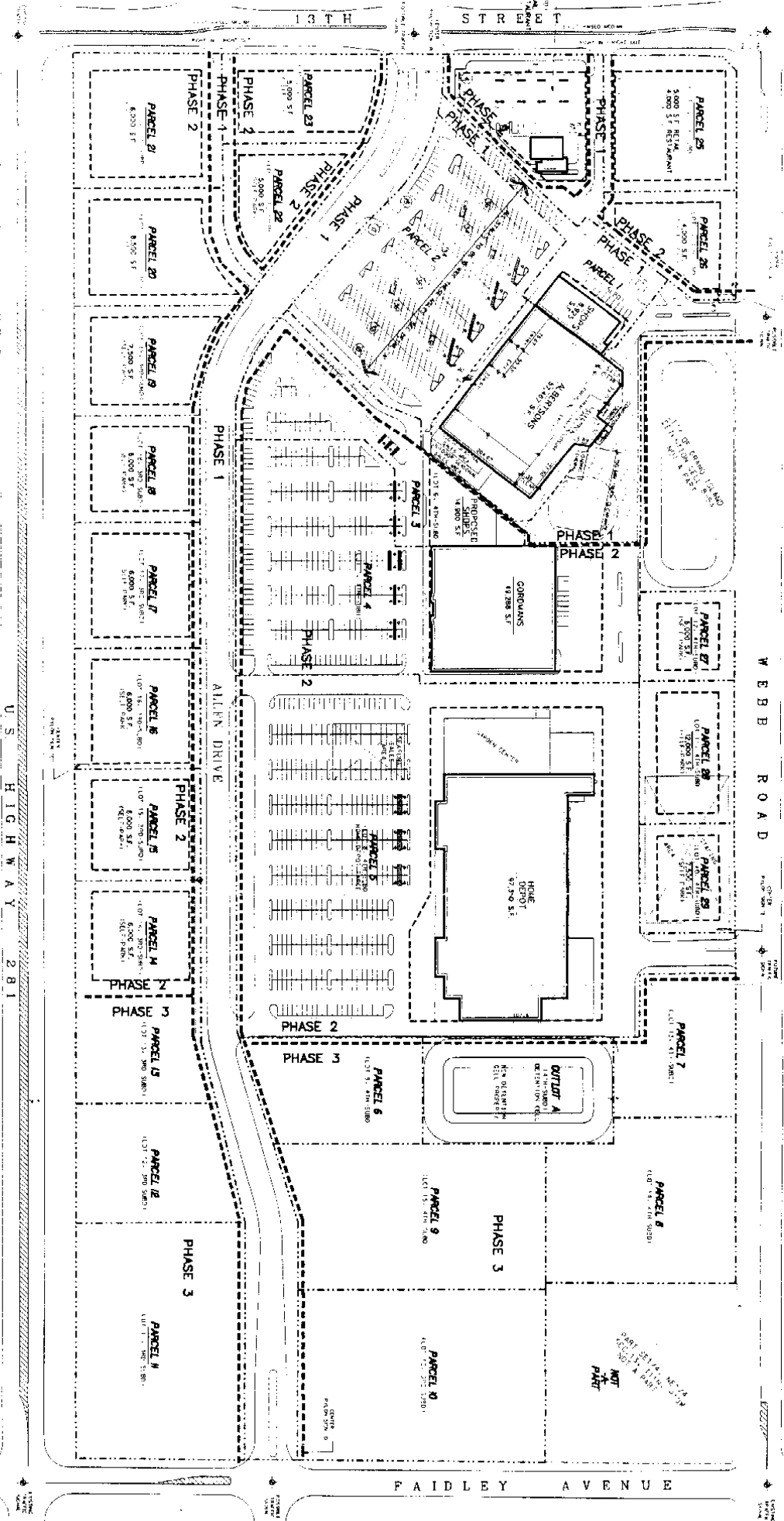
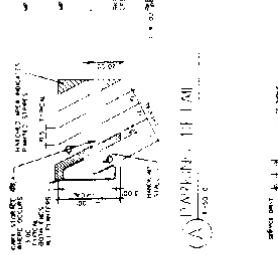


EXHIBIT 'A' SITE PLAN

200207724

200207724

<p>PROJECT: 200207724</p> <p>DATE: 11/20/00</p> <p>SCALE: AS SHOWN</p> <p>PROJECT: 200207724</p> <p>DATE: 11/20/00</p> <p>SCALE: AS SHOWN</p>		<p>S.E.C.</p> <p>10TH STREET AND</p> <p>US HWY 281</p> <p>GRAND ISLAND, NEBRASKA</p>	<p>2265</p>	<p>EXHIBIT 'A'</p> <p>SITE PLAN</p>
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GENERAL NOTES

CONVIN WITH OUT BESET OF SURVEY

NO TRUCK WELLS NATURAL DOCK ONLY

PARKING REQUIREMENTS

8' CITY DECK

BUILDING SETBACK REQUIREMENTS

20' FRONT SETBACK

10' SIDE SETBACK

10' REAR SETBACK

LANDSCAPE REQUIREMENTS

5' PLANTING STRIP

ZONING REQUIREMENTS

EXISTING USES

REQUIRED - ZONING

LEGEND

PROPERTY LINE

CONCRETE CURB LINE

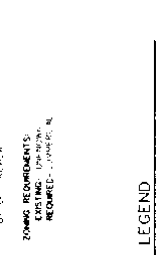
BUILDING AREA

HEAVY DUTY PAVING

WEARING SURFACE

ACCESS & EGRESS (AS SHOWN)

PHASE LINE



CHANGES	DATE
1	11/20/00
2	11/20/00
3	11/20/00
4	11/20/00
5	11/20/00
6	11/20/00
7	11/20/00
8	11/20/00
9	11/20/00
10	11/20/00

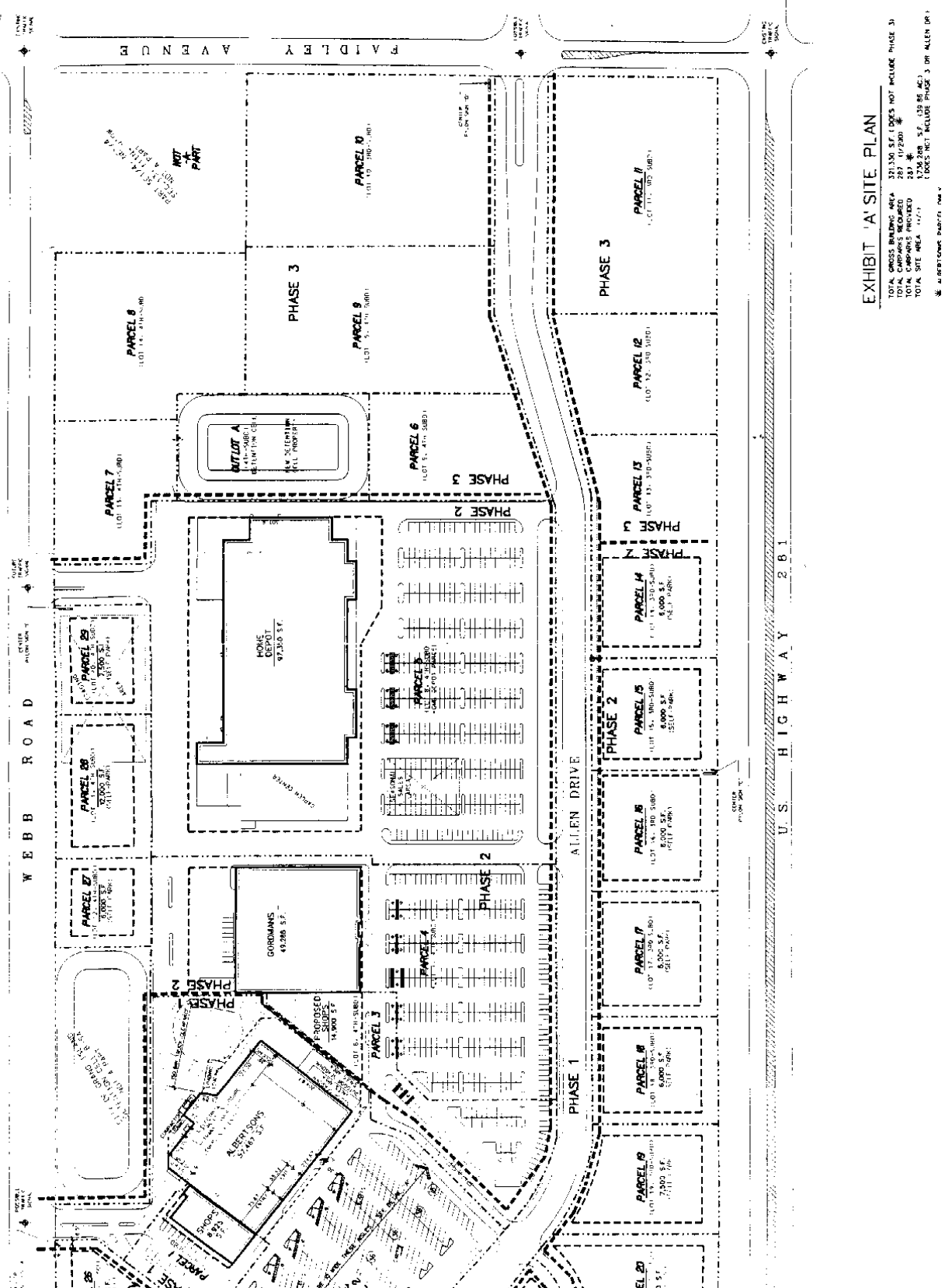


EXHIBIT 'A' SITE PLAN

TOTAL GROSS BUILDING AREA: 371,100 S.F. (DOES NOT INCLUDE PHASE 3)

TOTAL CARPARKS PROVIDED: 287 (11/20/00)

TOTAL CARPARKS PROVIDED: 287 *

TOTAL SITE AREA: 1,728,208 S.F. (12.95 AC)

* ALL GROSS TONAGE PARCEL 1, 2, & 3 OR ALLEN DR.